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In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, PETITIONER

v.

CHARLES W. RAMSEY AND JAMES W. KELLY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Constitutional provision, statutes and regulations involved	2
Statement	2
Summary of argument	7
Argument	10
Neither probable cause nor a warrant is necessay before opening an envelope as it enters the United States in the mail from abroad	10
A. Introduction	10
B. Border searches on less than probable cause are an accepted part of our constitutional heritage	13
C. Important law enforcement interests justify the minimal intrusion involved in opening an envelope received from abroad, even in the absence of probable cause	24
D. A warrant is not required to open an envelope at the border	33
Conclusion	37
Appendix A	1A
Appendix B	7A

CITATIONS

Cases:	
Almeida-Sanchez v. *United States*, 413 U.S. 266	17, 27
Boyd v. *United States*, 116 U.S. 616	13, 15
Brolan v. *United States*, 236 U.S. 216	15
California Bankers Association v. *Shultz*, 416 U.S. 21	17
Camara v. *Municipal Court*, 387 U.S. 523	34
Carroll v. *United States*, 267 U.S. 132	16
Colonnade Catering Corp. v. *United States*, 397 U.S. 72	12

224-159—76——1

Cases—Continued Page
Coolidge v. *New Hampshire*, 403 U.S. 443 34
Cotzhausen v. *Nazro*, 107 U.S. 215 7, 13, 15, 19, 21
Jackson, Ex parte, 96 U.S. 727 29
Katz v. *United States*, 389 U.S. 347 29, 34
Kleindienst v. *Mandel*, 408 U.S. 753 30
United States v. *Barclift*, 514 F. 2d 1073, certiorari denied, 423 U.S. 842 11
United States v. *Beckley*, 335 F. 2d 86, certiorari denied *sub nom. Stone* v. *United States*, 380 U.S. 922 10-11
United States v. *Bolin*, 514 F. 2d 554 11
United States v. *Brignoni-Ponce*, 422 U.S. 873 17
United States v. *Brown*, 499 F. 2d 829 certiorari denied, 419 U.S. 1047 12
United States v. *Cameron*, 538 F. 2d 254 11
United States v. *Diaz*, 503 F. 2d 1025 12
United States v. *Doe*, 472 F.2d 982, certiorari denied *sub nom. Rodriquez* v. *United States*, 411 U.S. 969 10
United States v. Emery, C.A. 1, No. 75–1420, decided September 24, 1976 11
United States v. *Henritze*, 522 F.2d 1279, certiorari denied, 424 U.S. 966 10
United States v. *Janis*, No. 74–958, decided July 6, 1976 32
United States v. *King*, 517 F.2d 350 10
United States v. *Martinez-Fuerte*, No. 74–1560, decided July 6, 1976 17, 28, 34, 36
United States v. *Milroy*, 538 F.2d 1033, certiorari denied, June 7, 1976 (No. 75–6479) 10
United States v. *Odland*, 502 F.2d 148, certiorari denied, 419, U.S. 1088 11
United States v. *Santana*, No. 75–19, decided June 24, 1976 5
United States v. *Sohnen*, 298 F. Supp. 51 21
United States v. *Soria*, 519 F.2d 1060 12
United States v. *Stornini*, 443 F.2d 833, certiorari denied, 404 U.S. 861 12
United States v. *Swede*, 326 F. Supp. 533 11, 21
United States v. *Thirty-seven Photographs*, 402 U.S. 363 16
United States v. *12 200-ft. Reels of Super 8mm. Film*, 413 U.S. 123 17

Cases—Continued Page
United States v. *Van Leeuwen*, 397 U.S. 249 29
United States v. *Watson*, 423 U.S. 411 12, 24
Weber v. *Freed*, 239 U.S. 325 15
Wolff v. *McDonnell*, 418 U.S. 539 31
Constitution, treaties, statutes, and regulations:
United States Constitution:
Article I, Section 8, Clauses 1 and 3 14
Fourth Amendment 2, 7, 12, 33, 36, 37
Warrant Clause 36
International Postal Treaty, Berne, October 9, 1874, protocol Art. 25, 19 Stat. 604 20–21
Additional Act of Lisbon, The, March 21, 1885, Art. 8, 25 Stat. 1344 21
Universal Postal Convention:
Paris, June 1, 1878, Art. 11, 20 Stat. 740–741 21
Vienna, July 4, 1891, Art. 16–3, 28 Stat. 1088–1089 21
Washington, June 15, 1897, Art. 16–3, 30 Stat. 1641–1642 21
Rome, May 26, 1906, Art. 16–3–2°(b), 35 Stat. 1656–1657 21
Madrid, November 30, 1920, Art. 18–2(d), 42 Stat. 1991–1992 21
Stockholm, August 28, 1924, 44 Stat. 2221 *et seq.*:
Art. 34, Section 9, 44 Stat. 2238 20, 21
Art. 41, Section 1(d), 44 Stat. 2241 20
Vienna, 1964, Art. 30, 16 U.S.T. 1348 (1965) 22
Tokyo, 1969, Art. 31, 22 U.S.T. 1099 (1971) 22
Lausanne, 1974, Art. 34 22
Act of July 31, 1789, 1 Stat. 29—
Section 23, 1 Stat. 43 14
Section 24, 1 Stat. 43 14
Rev. Stat. § 3061 15, 18, 20
1 Stat. 70 19
1 Stat. 97 14
1 Stat. 235–236 19
10 Stat. 140 19
12 Stat. 704 19
17 Stat. 301 19
44 Stat. 2279–2280 21
18 U.S.C. 1702 30, 32
18 U.S.C. App. 1202(a)(1) 5

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 538 F. 2d 415.

JURISDICTION

The judgment of the court of appeals (Pet. App. 21a) was entered on June 10, 1976. On July 1, 1976, the Chief Justice extended the time within which to file a petition for a writ of certiorari to August 9, 1976. The petition was filed on August 5, 1976, and was granted on October 4, 1976 (A. 82). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether probable cause and a search warrant are required before customs officials may open an envelope entering the United States from abroad, when they suspect that the envelope contains smuggled goods.

CONSTITUTIONAL PROVISION, STATUTES AND REGULATIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, particularly describing the place to be searched, and the persons or things to be seized.

19 U.S.C. 482, 19 U.S.C. 1582, and the pertinent portions of 19 C.F.R. Part 145 and 39 C.F.R. Part 61 (1975) are set out in Appendix A, *infra,* at pages 1A–5A.[1]

STATEMENT

In November 1973 Sylvia Bailey and William Ward, then residing in West Germany, were principals in an international narcotics trafficking operation

[1] 39 C.F.R. Part 61, in effect at the time of the search in this case, has been superseded by U.S.P.S. Pub. 42, Part 820, incorporated at 39 C.F.R. Part 10, 41 Fed. Reg. 35683–35684 (1976), which makes no substantive change.

(Pet. App. 2a–3a). West German agents intercepted several trans-Atlantic telephone conversations between Bailey and respondent Ramsey during which the narcotics operation was discussed (*id.* at 3a).

In late January 1974 Bailey and Ward moved the base of their operation to Thailand (Pet. App. 3a). Thai officials, alerted by West German authorities, saw them mailing numerous envelopes (*ibid.*). Five envelopes were inspected by Thai officials; one of the addresses was linked to respondents (*ibid.*). On February 2, 1974, Thai officials arrested Bailey and Ward and seized numerous envelopes containing heroin. Eleven of the envelopes bore Washington, D.C. addresses connected to respondents (*ibid.*).

Two days later George Kallnischkies, a customs officer in New York City who was unaware of these events, detected undeclared matter in eight envelopes en route from Thailand to four addresses in Washington, D.C. (A. 30–31). These envelopes were "rather bulky," and officer Kallnischkies believed that they contained merchandise rather than correspondence (A. 31, 32, 42, 53). He weighed one of them and found that it was three times the ordinary weight of an airmail letter (A. 31, 47). He opened this envelope and found, between two pieces of cardboard, a plastic bag containing a white substance that he believed to be heroin. The envelope contained no correspondence. Based upon this discovery, he opened the other seven bulky envelopes, which appeared to have been addressed on the same typewriter as was the first en-

224-159—76——2

velope; these envelopes also contained heroin (A. 32, 42, 56, 61–62).

The envelopes were resealed, and six of them were delivered to three addresses (A. 67–74).[2] Federal agents saw respondent Kelly collect the envelopes, rendezvous with respondent Ramsey, and give Ramsey a brown paper bag (A. 70–72). Respondents were then arrested. The bag contained the six envelopes of heroin, $1,100 in cash, and material with which to dilute the heroin (A. 72–73). Additional evidence was discovered pursuant to search warrants for several residences (A. 74–80).

Respondents were indicted for numerous offenses arising out of this transaction (A. 9–15). They moved to suppress the heroin that had been discovered by officer Kallnischkies.[3] After an evidentiary hearing, the district court denied the motion from the bench (A.

[2] After officer Kallnischkies had opened the envelopes, they were sent to Washington in a locked pouch; they were opened in Washington by agents of the Drug Enforcement Administration, who removed most of the heroin before making the delivery to respondents. The agents obtained a search warrant before opening the envelopes (A. 5, 60). This was an exceptional procedure; warrants are not obtained to open the mail in the first instance (A. 33, 43), and a post-opening warrant obviously does not justify the original opening. Nothing in the record of this case indicates why the agents obtained the warrant. It is possible, however, that they did so because they feared that the second opening might be viewed as an inland search to which the border search rules would not apply. At all events, the obtaining of a post-opening warrant in this case does not indicate anything about the constitutionality of the initial warrantless opening or the feasibility of requiring pre-opening warrants.

[3] It is not clear why respondents have standing to object to officer Kallnischkies' opening of the envelopes. The envelopes were not addressed to them and contained no correspondence. The government did not contend below that respondents lack standing, however, and we therefore have not presented it as a question for resolution by this Court. See *United States* v. *Santana*, No. 75–19, decided June 24, 1976, slip op. 3 n. 2.

54). Respondents then waived their right to a jury trial, and the case was submitted on the basis of stipulated facts and exhibits. On December 20, 1974, the district court found respondents guilty of unlawful importation of heroin and of possession of heroin with intent to distribute it, in violation of 21 U.S.C. 841(a) and 952(a). The court also found respondent Kelly guilty on one count, and respondent Ramsey guilty on three counts, of the unlawful use of a communication facility, in violation of 21 U.S.C. 843(b). Finally, the court found respondent Ramsey guilty of two firearms offenses.[4] Respondent Ramsey was sentenced to concurrent terms of imprisonment, the longest of which was 10 to 30 years. Respondent Kelly was sentenced to partially concurrent and partially consecutive terms aggregating 10 to 30 years' imprisonment.

A divided panel of the court of appeals reversed on all counts. Although it found officer Kallnischkies' seizure of the envelopes reasonable, it held that the envelopes could not be opened without probable cause and a warrant. The court acknowledged that border

[4] These offenses—receiving and possessing a firearm as a convicted felon, in violation of 18 U.S.C. App. 1202(a)(1), and receiving and possessing a pistol, in violation of 22 D.C. Code 3203—were the subject to a separate indictment. The weapons were found as a result of respondents' arrests and so are "fruit" of the discovery of the heroin. The convictions consequently must stand or fall with the heroin offenses.

searches have traditionally been recognized as an exception to the warrant requirement of the Fourth Amendment (Pet. App. 5a–7a). It thought, however, that this exception was justified only by the exigencies attendant upon other kinds of border searches (*id.* at 7a); finding no exigencies compelling officer Kallnischkies to act without a warrant, the court concluded that he could not do so.

The court distinguished between letter mail envelopes and mail packages, indicating that warrantless searches of the latter would be allowed with or without exigent circumstances.[5] The court advanced four reasons for this distinction. First, only "limited kinds of contraband * * * can be concealed within a letter-sized envelope," so that it is less likely that an envelope, "rather than an automobile or a suitcase, contains contraband" (Pet. App. 8a). Second, the court thought that officials using metal detectors, X-rays, and trained dogs could detect items smuggled in envelopes (*ibid.*). Third, envelopes can be detained more readily than travellers while a warrant is being obtained (*id.* at 10a). Finally, the court thought that warrantless openings of envelopes would inhibit freedom of expression (*id.* at 11a–13a).

Judge Robb dissented. He would have followed the uniform decisions of other courts of appeals that have allowed warrantless inspections of envelopes at the

[5] The court of appeals limited its holding to international letter class mail, and it did not require probable cause or a warrant to open other classes of mail on which less postage is paid. See Pet. App. 9a–10a n. 6.

border (Pet. App. 19a–20a). In his view, the historical justification for border searches is sufficient to allow the opening of an envelope. He also questioned the consistency of the majority's position: observing that the majority would allow searches of people and packages, he argued that a package or envelope should not acquire greater security against inspection simply because it is smaller or is not carried by a person.

SUMMARY OF ARGUMENT

The judgment of Congress, embodied in longstanding statutes, is that border searches without probable cause or warrants are essential to detect dutiable items and contraband as they enter the country. Approximately one billion envelopes enter the United States from abroad each year. Many of these envelopes are large, stiff or bulky, and they conceal their contents as well as does a cardboard box. Unless customs officers have authority to open the envelopes, they will become hiding places for smuggled goods of all sorts.

The judgment of Congress is entitled to a strong presumption of constitutionality. This is especially so here, because border searches have been accepted for more than 200 years. In 1882 this Court upheld a seizure from an envelope entering the United States (*Cotzhausen* v. *Nazro*, 107 U.S. 215), and since then the right of customs inspectors to open parcels at the border has not been seriously questioned. The Court has continued to indicate in considered *dicta* that such searches are consistent with the Fourth Amendment.

The power to inspect things entering this country has not been confined to goods travelling with their owner; the first customs statute authorized the seizure of goods arriving by ship in much the same way small parcels today arrive by mail. Nor would there be any logic in such a distinction. Bulky envelopes arriving at the border may contain counterfeit money, microfilm, jewels, precious metals, drugs, or many other things either barred from entry or subject to duty.

Bulky envelopes, like larger containers, rarely announce that they contain contraband, and customs officers rarely know enough about them to have even a fair idea of their contents. To require probable cause as a condition of inspection therefore would be to guarantee success to resourceful smugglers.

The difficulties in developing probable cause are magnified by the enormous quantities of mail entering this country. More than one billion envelopes arrive each year; it is not possible to subject each one to the scrutiny necessary to ascertain its contents with precision. Even devices such as magnetometers and X-ray machines cannot detect heroin; although trained dogs sometimes can detect marijuana, odors can be masked, and dogs usually cannot smell substances (such as heroin) that have only faint odors. In fiscal 1976 customs officers opened approximately 270,000 envelopes (less than 0.03% of the total), of which approximately 48,000 contained dutiable or prohibited items, which is more than three envelopes containing dutiable or prohibited items per officer per working day. In order to find these en-

velopes, each officer opens approximately 19 envelopes per working day, sorting them from the approximately 1,900 whose exteriors he inspects. If probable cause and a warrant were required for each opening, the inspection process would grind to a halt.

Perhaps a requirement of probable cause might be justified if it were necessary to protect important privacy interests. But the opening of a bulky envelope at the border can fairly be characterized as a minimal intrusion in an area where there has traditionally been little expectation of privacy. It is certainly less of an intrusion than the detailed personal inspection to which international travelers are routinely exposed. Why should the greater intrusion be allowed and the lesser intrusion be banned?

The court of appeals evidently was most concerned with a supposed "chilling effect" that openings of envelopes might have upon the expression of ideas. Although we do not question the legitimacy of concern about any practice involving warrantless reading of mail, 19 C.F.R. 145.3 already provides that no correspondence may be read without a warrant. There is no evidence in the record of this case that customs officers disregard this rule. Moreover, any person desiring to guard against the opening of his international correspondence can do so by sending envelopes that are not so large and bulky that they give rise to suspicion that they contain something other than correspondence; there has been no claim in this case that customs officers open such envelopes. In any event, respondents have not argued that they were exposed to any chilling effect; the envelopes involved

here contained no correspondence. The concerns articulated by the court of appeals would justify, at most, a rule that correspondence seized from the mails without a warrant, and any "fruits" derived from reading such correspondence, may not be admitted into evidence. There is no need to fashion a broader exclusionary rule.

ARGUMENT

NEITHER PROBABLE CAUSE NOR A WARRANT IS NECESSARY BEFORE OPENING AN ENVELOPE AS IT ENTERS THE UNITED STATES FROM ABROAD IN THE MAIL

A. INTRODUCTION

This case involves the opening by a Customs Service officer of envelopes mailed into this country from abroad. In opening the envelopes, which he suspected contained something other than or in addition to correspondence, the officer was acting pursuant to authority granted by a statute enacted in 1866 that explcitly allows customs searches of "envelopes" (see 19 U.S.C. 482, App. A, *infra,* p. 1A) and pursuant to postal and customs regulations implementing that statute (App. A, *infra,* pp. 1A–5A). The officer was proceeding in conformity with the decisions of every court, save the court of appeals in this case, that has considered the problem.[6] His actions were unquestion-

[6] See *United States* v. *Doe*, 472 F. 2d 982, 984–985 (C.A. 2) (*dictum*), certiorari denied *sub nom. Rodriquez* v. *United States*, 411 U.S. 969; *United States* v. *Milroy*, 538 F. 2d 1033 (C.A. 4), certiorari denied, June 7, 1976 (No. 75–6479); *United States* v. *King*, 517 F. 2d 350, 352–353 (C.A. 5); *United States* v. *Henritze*, 522 F. 2d 1279 (C.A. 5), certiorari denied, 424 U.S. 966; *United States* v. *Beckley*, 335 F. 2d 86, 88–89 (C.A. 6) (*dictum*), certiorari denied *sub nom. Stone* v. *United States*, 380 U.S. 922; *United States* v. *Bolin*, 514 F. 2d 554 (C.A. 7); *United States* v. *Odland*, 502 F. 2d 148, 151 (C.A. 7), certiorari denied, 419 U.S. 1088; *United States* v. *Barclift*, 514 F. 2d 1073, 1074–1075 (C.A. 9), certiorari denied, 423 U.S. 842; *United States* v. *Swede*, 326 F. Supp. 533, 536 (S.D. N.Y.). The First Circuit recently upheld a border search of a package without probable cause or a warrant, but it reserved the question of the search of an envelope. *United States* v. *Emery*, C.A. 1, No. 75–1420, decided September 24, 1976, slip op. 3.

ably proper under the traditional approach to border searches.

It may be helpful to begin by pointing out what this case does not involve. It does not involve the opening of domestic mail. It does not present the difficult problem of defining the geographic limits of border searches, and it does not require the Court to consider whether some inland area is the "functional equivalent" of the border; in this case the search took place at a post office as the mail was entering the United States, the very point where border search authority must be exercised if it is to be meaningful. This case does not present any question concerning the standard of conduct established by the Fourth Amendment for especially intrusive searches at the border, such as visual inspections of the body ("strip searches") and intrusions into the body itself ("body cavity searches").[7] The search here involved an in-

[7] The law with respect to such searches is instructive, however. Customs officials are entitled to make intrusive searches without a warrant upon real or reasonable suspicion (for strip searches) or a clear indication of wrongdoing (body cavity searches). See, *e.g.*, *United States* v. *Cameron*, 538 F. 2d 254 (C.A. 9) (collecting cases).

spection of a package, not of a person. No one was exposed to indignity or delay. The sole question presented is whether it is "reasonable," within the meaning of the Fourth Amendment, for a customs officer, having before him an envelope that he has reasonable cause to suspect contains something other than correspondence, to open that envelope without antecedent judicial approval.

We submit that the search here is justified by the single fact that the officer knew that the envelope was entering the United States from abroad. Nothing else—not suspicion, not probable cause, and not antecedent judicial approval—is constitutionally necessary.[8] That is the judgment of Congress embodied in longstanding statutes that condition the entry of things into this country upon exposure to the routine searches necessary to detect the importation of prohibited or dutiable items. This long history, and the judgment of Congress, are entitled to considerable deference. *United States* v. *Watson,* 423 U.S. 411, 416; *Colonnade Catering Corp.* v. *United States,* 397 U.S. 72, 75–76. Border searches stand upon their unique historical and practical footing rather than, as the

[8] A number of lower courts have confirmed the authority of customs officials to search items brought into the country "on subjective suspicion alone, or even on a random basis." See, *e.g.*, *United States* v. *Stornini*, 443 F. 2d 833, 835 (C.A. 1), certiorari denied, 404 U.S. 861; *United States* v. *Soria*, 519 F. 2d 1060, 1063 (C.A. 5); *United States* v. *Diaz*, 503 F. 2d 1025, 1026–1027 (C.A. 3); *United States* v. *Brown*, 499 F. 2d 829, 833 (C.A. 7), certiorari denied, 419 U.S. 1047.

court of appeals supposed, upon exigent circumstances in particular cases.

We think that the rationale for border searches of persons and their effects applies with full force to border searches of envelopes. It would be strange indeed if envelopes were entitled to greater protection than people. What this Court said in 1882 is no less true today (*Cotzhausen* v. *Nazro,* 107 U.S. 215, 218):

> Of what avail would it be that every passenger, citizen and foreigner * * * is compelled to sign a declaration before landing, either that his trunks and satchels in hand contain nothing liable to duty, or if they do, to state what it is, and even the person may be subjected to a rigid examination, if the mail is to be left unwatched, and all its sealed contents * * * are to be exempt from seizure, though laces, jewels, and other dutiable matter of great value may thus be introduced from foreign countries.

If, as is universally agreed, "even the person may be subjected to a rigid examination" at the border, it must follow that effects entering the United States separately, whether in trunks, in parcels, or in envelopes, are subject to examination.

B. BORDER SEARCHES ON LESS THAN PROBABLE CAUSE ARE AN ACCEPTED PART OF OUR CONSTITUTIONAL HERITAGE

1. Border searches occupy a unique status in our law. As the Court observed in *Boyd* v. *United States,* 116 U.S. 616, 623, "the seizure of goods forfeited for a breach of the revenue laws, or concealed to avoid duties payable on them, has been authorized by Eng-

lish statutes for at least two centuries past; and the like seizures have been authorized by our own revenue acts from the commencement of the government" (footnote omitted). A statute enacted by the same Congress that proposed the Bill of Rights provided that customs officials had "full power and authority" to search vessels for smuggled goods.[9] Ever since, border searches without probable cause or a warrant have been an unquestioned part of the system of detecting smuggling. See generally Note, *From Bags to Body Cavities: The Law of Border Search,* 74 Colum. L. Rev. 53 (1974); Barnett, *A Report on Search and Seizure at the Border,* 1 Am. Crim. L.Q. no. 4, p. 36 (1963).

Clauses 1 and 3 of Article I, Section 8 of the Constitution grant Congress the power to regulate com-

[9] The first customs statute (Section 24 of Act of July 31, 1789, 1 Stat. 29, 43) was enacted approximately two months prior to the proposal of the Bill of Rights to the state legislatures on September 25, 1789 (1 Stat. 97). Sections 23 and 24 provided in part:

"Sec. 23. * * * [I]t shall be lawful for the collector, or other officer of the customs, after entry made of any goods, wares or merchandise, on suspicion of fraud, to open and examine, in the presence of two or more reputable merchants, any package or packages thereof * * *.

"Sec. 24. * * * [E]very collector, naval officer and surveyor, or other person specially appointed by either of them for that purpose, shall have full power and authority, to enter any ship or vessel, in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed; and therein to search for, seize, and secure any such goods, wares or merchandise."

Section 24 differentiated between the cause needed to search a vessel for dutiable goods and the cause needed to search a "dwelling-house, store, [or] building" on land where it was suspected that smuggled goods had been placed. In the latter case, a warrant was required; in the former, mere suspicion was sufficient.

merce with foreign nations and to lay and collect duties. Because the power thus granted includes the power to "exclude merchandise at [Congress'] discretion" (*Brolan* v. *United States,* 236 U.S. 216, 219; *Weber* v. *Freed,* 239 U.S. 325, 329), it also includes the power to condition the entry of all things into the country upon exposure to the routine, suspicionless inspections necessary to prevent the importation of prohibited things.

Cotzhausen v. *Nazro, supra,* this Court's first border search case, involved a seizure of a shawl from a package sent through the mails. The seizure was made under Section 3061 of the Revised Statutes, which is the source of 19 U.S.C. 482, upon which we rely here.[10] The Court upheld the search and seizure, remarking that the statutes "authorize and direct the seizure of any property imported contrary to law; and the officer is to open *envelopes* for that purpose, and, on reasonable ground to believe it subject to duty or to have been unlawfully imported, he shall seize and secure the same for trial" (107 U.S. at 219; emphasis added).

The right of customs officials to open parcels at the border has never since been seriously questioned. The Court has continued to endorse such searches in considered *dicta,* and no Justice has expressed doubts about their constitutionality. The Court wrote in *Boyd* v. *United States, supra,* 116 U.S. at 623, that searches

[10] The search in this case also was authorized by 19 U.S.C. 1582 (App. A, *infra*, p. 1A) and implementing regulations. Cf. 19 U.S.C. 1498(a)(1) and 1499.

at the border for smuggled goods "are totally different things" from inland searches.

In *Carroll* v. *United States,* 267 U.S. 132, the Court considered the warrantless stop and search of an automobile for bootleg liquor. It held that such searches could be conducted without a warrant, but that they required probable cause. It carefully distinguished border searches, however (267 U.S. at 153–154):

> It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travellers may be so stopped in crossing an international boundary because of national self protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search * * *.

More recent cases demonstrate that border searches continue to be accepted. *United States* v. *Thirty-seven Photographs,* 402 U.S. 363, involved an opening of luggage at the border and the seizure of allegedly obscene materials. The Court remarked (*id.* at 376): "[A] port of entry is not a traveler's home. His right to be let alone neither prevents the search of his luggage nor the seizure of unprotected, but illegal, materials * * *. Customs officers characteristically inspect

luggage and their power to do so is not questioned in this case; it is an old practice and is intimately associated with excluding illegal articles from the country."

The same theme was sounded in *United States* v. *12 200-Ft. Reels of Super 8mm. Film,* 413 U.S. 123, 125, in which the Court again upheld a seizure of obscene materials at the border, writing: "Import restrictions and searches of persons or packages at the national borders rest on different considerations and different rules of constitutional law from domestic regulations. * * * Historically such broad powers [to search] have been necessary to prevent smuggling and to prevent prohibited articles from entry." The Court recognized that the mails were a particularly vulnerable path of entry: "[A] large volume of obscene material on microfilm could rather easily be smuggled into the United States by mail" (*id.* at 129).

In the recent cases involving inland searches near the border, the Court repeatedly has recognized that border searches themselves stand on a different footing, and that neither probable cause nor a warrant is necessary for a search at the border itself. *Almeida-Sanchez* v. *United States,* 413 U.S. 266, 272 (opinion of the Court), 288 (opinion of White, J.); *United States* v. *Brignoni-Ponce,* 422 U.S. 873, 884 (opinion of the Court), 887 (opinion of Rehnquist, J.); *United States* v. *Martinez-Fuerte,* No. 74–1560, decided July 6, 1976; see also *California Bankers Association* v *Shultz,* 416 U.S. 21, 62–63.

The power to inspect people and goods upon entry into this country has not been limited to goods travelling with their owner; the first customs statute authorized the seizure and inspection of goods arriving by ship [11] in much the same way small packages today arrive by mail. Nor would there be any logic to such a limitation. Bulky envelopes arriving at the border may contain money, microfilm, jewels, precious metals, drugs, and many other things either barred from entry or subjected to duty. To close such envelopes to customs officials would be to create a broad highway over which smugglers such as respondents could ply their trade.

2. The customs procedures with respect to mail have evolved differently from the customs procedures with respect to importations by other means, and it may be helpful to trace that evolution briefly. 19 U.S.C. 482 is the recodification of Rev. Stat. § 3061, an amended version of the very first customs statute. Section 482 provides that a customs officer may "search any trunk or envelope, wherever found, in which he may have reasonable cause to suspect there is merchandise which was imported contrary to law * * *." This is now implemented by 19 C.F.R. 145.2, which authorizes customs officials to open all mail originating outside the customs territory, with exceptions for diplomatic mail.

Customs officials have not always used the full powers conferred by statute, however. Until approximately 100 years ago, the international letter mail system was

[11] See note 9, *supra*.

devoted primarily to the transmission of correspondence, and merchandise was sent by freight or parcel post. The Post Office began as an establishment solely for the "communication of intelligence by letter, newspaper or pamphlet" (5 J.C.C. 719 (1776); 21 J.C.C. 670 (1782)).[12] Merchandise or other non-written material was not generally admitted to the domestic mails until 1863. See 12 Stat. 704; 17 Stat. 301. Until 1924 it was generally forbidden to introduce dutiable articles into the international letter mails. The Court observed in *Cotzhausen* v. *Nazro, supra,* 107 U.S. at 217–218, not only that the importer had neglected to pay duty on the shawl, but also that the sender had

[12] During these earliest years customs officials had little role to play with respect to letters arriving from abroad. The federal government did not yet levy duties on imports, and the major role of customs officials was ensuring that letters were delivered to postmasters by the officers of incoming vessels; the vessels were not allowed to carry mail themselves from one port to another except under contract with the Post Office. The Continental Congress provided in this regard (16 J.C.C. 413 (1780)):

"That all masters of packets and other vessels in continental service be, and they are hereby, required to lodge whatever letters they bring from abroad, in the post office nearest to the port where they arrive, and immediately after their arrival."

Approximately two years later, Congress proscribed the opening of letters (other than "dead mail") by postal employees (23 J.C.C. 673–674 (1782)).

These postal ordinances were given effect by the First Congress. 1 Stat. 70. The Second Congress enacted postal legislation requiring the delivery of letters on board vessels to the postmaster at the port of entry (1 Stat. 235–236). In 1852 customs collectors were authorized to "carefully search every vessel for letters." 10 Stat. 140. These duties apparently included nothing more than assisting in enforcing the postal laws.

224-159—76——4

posted it in the mails in violation of a treaty excluding dutiable articles from the mails.

Smuggling by parcel post packages had been a problem much earlier, however. In 1866 Congress enacted Rev. Stat. § 3061 (now 19 U.S.C. 482), which authorized customs officials to open "envelopes" for inspection. This authority was used to open unsealed or parcel post envelopes; it was not immediately used to open sealed letter mail. The first regulation outlining the agreement between postal and customs authorities to cooperate in the performance of their duties was promulgated in 1871; it provided that customs officials could open any package arriving from abroad without probable cause or a warrant, but that letter mail would be opened only by authority of the addressee. Customs officials could require the addressee to come to the post office and open the letter in their presence. 1873 Postal Laws and Regulations ("P.L. & R.") § 52.[12a]

This system was effective as long as international conventions continued to prohibit the use of letter mail to carry dutiable articles, and as long as senders generally respected that ban. In 1924, however, the Universal Postal Convention was modified to permit the insertion of certain dutiable articles into international letter mail. Universal Postal Convention ("UPC"), Stockholm, August 28, 1924, Art. 34, Section 9; Art. 41, Section 1(d), 44 Stat. 2238, 2241.[13]

[12a] See also 1879 P.L. & R. § 1133; 1887 P.L. & R. § 621; 1893 P.L. & R. § 579; 1902 P.L. & R. § 696.

[13] From 1874 to 1924 the multilateral postal convention had prohibited the insertion of dutiable articles into letter post items. International Postal Treaty, Berne, October 9, 1874, protocol Art. 25, 19 Stat. 604; UPC, Paris, June 1, 1878, Art. 11, 20 Stat. 740–741; The Additional Act of Lisbon, March 21, 1885, Art. 8, 25 Stat. 1344; UPC, Vienna, July 4, 1891, Art. 16–3, 28 Stat. 1088–1089; UPC, Washington, June 15, 1897, Art. 16–3, 30 Stat. 1641–1642; UPC, Rome, May 26, 1906, Art. 16–3–2°(b), 35 Stat. 1656–1657; UPC, Madrid, November 30, 1920, Art. 18–2(d), 42 Stat. 1991–1992. See *Cotzhausen* v. *Nazro*, *supra*, 107 U.S. at 217–218.

In order to alleviate potential problems of smuggling or avoidance of duty, the Convention authorized postal administrations to require the sender to complete and attach to the envelope a "'green label," a form declaring the nature and value of the contents. See 44 Stat. 2279–2280. Attachment of a "green label" amounted to a consent to search (44 Stat. 2238), and the Post Office promulgated regulations authorizing the opening of "green label" mail by customs officials."[14]

When incoming letter mail apparently containing merchandise lacked a "green label," customs and postal officials arranged for a delivery to the addressee at the post office but declined to turn over the mail until opening had been authorized.[15] Letter mail was not opened by customs officials acting alone until 1971.

The restraint with which customs officials had exercised their authority under 19 U.S.C. 482 was attrib-

[14] See 1924 P.L. & R. § 632, ¶¶ 3, 9(a); 1940 P.L. & R. §§ 2229–2230; 1948 P.L. & R. Part 116; 39 C.F.R. 116.8(a), 116.12(c) (1949); 39 C.F.R. 161.1 (1955); 39 C.F.R. 132.1(a) (1959); 39 C.F.R. 151.3(a) (1962); 39 C.F.R. 262.1 (1968).

[15] See note 14, *supra*. A violation of these regulations by customs officials was not, however, considered to be a ground to suppress any evidence discovered during a search. See *United States* v. *Sohnen*, 298 F. Supp. 51, 53 (E.D. N.Y.); *United States* v. *Swede*, *supra*.

utable in part to concern, shared by postal authorities, that unilateral searches of non-"green label" items would violate the Convention [16] and in part to the fact that the old procedures usually had been a satisfactory way to gain access to envelopes requiring inspection. Moreover, so long as customs officials were enforcing tariff regulations rather than absolute prohibitions on entry, addressees were usually willing to cooperate with the procedures.[17] But the volume of international letter mail has expanded dramatically in recent years, and smugglers do not attach "green labels" to their mail. Attempts to obtain the addressee's consent to search, or the making of a "controlled delivery" (such as was done in this case), require substantial investments of time by postal and customs employees, investments that are worthwhile only when customs officials are almost certain that the envelope contains contraband. Too, attempts to obtain addressee consent create a substantial risk of alerting the smugglers and allowing them to flee.

In 1970 the Post Office and Treasury Department therefore jointly proposed changes in the postal and customs regulations to allow the opening of non-"green label" envelopes that were believed to contain dutiable or prohibited matter. 35 Fed. Reg. 2410–2411. The Treasury Department stated (*id.* at 2410):

[16] The Convention now explicitly allows the opening of any envelope at the border. UPC, Vienna, 1964, Art. 30, 16 U.S.T. 1348 (1965); UPC, Tokyo, 1969, Art. 31, 22 U.S.T. 1099 (1971); UPC, Lausanne, 1974, Art. 34.

[17] Addressees usually were willing to authorize openings and pay duty to receive valuable articles; they obviously would be far less likely to authorize openings to search for contraband.

> The long recognized authority of the Bureau of Customs to open sealed letters arriving in the international mail has been inhibited by the presence of [certain postal] regulations which generally provide that a sealed letter of foreign origin believed to contain prohibited or dutiable matter shall be returned unopened to its origin unless the addressee authorizes the opening of the letter.

The practice of not searching non-"green label" mail except with consent made smuggling too easy: the sender would fail to attach a "green label" to the envelope, which would often be delivered unsuspectingly; if, however, customs officials suspected that the letter contained contraband, and requested the addressee's consent to search, the addressee would be alerted and could refuse delivery. The new regulations, which allow customs inspectors to open envelopes when they suspect they contain matter other than correspondence, alleviate that problem and allow more efficient use of scarce customs resources.

Some members of Congress objected to the new regulations (116 Cong. Rec. 13862–13864 (1970)), but efforts to prohibit the change were defeated.[18] The

[18] A proposed amendment was defeated on the floor of the House. 116 Cong. Rec. 20482–20483 (1970). In the Senate, a committee held hearings on a bill (S. 3613, 91st Cong., 2d Sess. (1970)) that would have required a warrant for the opening of any envelope. Hearings on S. 3613 before the Senate Committee on Post Office and Civil Service, 91st Cong., 2d Sess. (1970). The Committee reported a bill that required a warrant only for sealed domestic mail. After a conference Congress adopted the Senate suggestion, which become 39 U.S.C. 3623(d). See H.R. Conf. Rep. No. 91-1363, 91st Cong., 2d Sess. 88 (1970).

new regulation became effective on July 22, 1971. 36 Fed. Reg. 11850–11851. It represents an application to envelopes of the same power customs officials always have exercised over parcels, trunks, and persons. It should be upheld in light of that history. See *United States* v. *Watson, supra.*

C. IMPORTANT LAW ENFORCEMENT INTERESTS JUSTIFY THE MINIMAL INTRUSION INVOLVED IN OPENING AN ENVELOPE RECEIVED FROM ABROAD, EVEN IN THE ABSENCE OF PROBABLE CAUSE

In our view the history and long constitutional acceptance of border searches is sufficient to support the search that took place in this case. But we need not stand upon history alone, since compelling practical considerations render the practice constitutionally reasonable. These considerations have been recognized by the American Law Institute, which has endorsed border searches. The *Model Code of Pre-arraignment Procedure* § SS 260.2(1)(d) (1975) provides that customs officials should be able to search without a warrant "personal effects, and packages and other containers of whatever description," as they enter the United States. Section SS 260.2(2) provides that reasonable cause is not required to undertake such searches. The commentary to the *Model Code* (*id.* at pp. 546–550) concludes that border searchers are justified by practical necessity as well as by history.

The Customs Service faces staggering difficulties in searching for dutiable articles and contraband in incoming mail. The Customs Service informs us that during each of fiscal years 1975 and 1976 more than

one billion envelopes and 42 million packages entered the United States from abroad.[19] Most of these envelopes and packages are not accompanied by any declaration of their contents, and the fact that they are arriving from abroad prevents customs inspectors from having even a fair idea as to what they may contain. Many of the envelopes are large, bulky and stiff, and they conceal their contents as well as does a cardboard box. Unless customs officials have authority to inspect these envelopes, they will become hiding places for smuggled goods of all sorts. To require probable cause as a condition of inspection would be to guarantee success to resourceful smugglers.

The Customs Service has augmented its staff of 62 officers assigned to inspection of envelopes with trained dogs and an X-ray machine.[20] Regrettably, these tools are of limited value in detecting contraband. Dogs can smell contraband only if it gives off discernible odors; although marijuana has such an odor (if it is not masked), jewelry, counterfeit currency, pornography, and many other dutiable and prohibited items do not. The odor of heroin is exceedingly faint, and it can be masked. Although an X-ray machine can detect metals and other dense objects, it cannot detect drugs and microfilm. At best, the customs inspectors can isolate those envelopes that are likely to contain objects other than correspondence.

[19] "Envelopes," in the sense used in this brief, refers to all envelope-shaped mail of any postage rate, and not simply mail moving at international letter class rates.

[20] Twenty customs facilities use trained dogs.

Whether those envelopes contain dutiable material, contraband, non-dutiable matter, or simply cardboard usually must be determined by a visual inspection.

The Customs Service informs us that in fiscal 1975 and again in fiscal 1976 the Postal Service referred for screening approximately 27 million envelopes (about one-fortieth of the envelopes entering the United States in each of those years). [21] The Customs Service estimates that in each of those years its inspectors opened for visual inspection approximately 270,000 pieces of mail, or one of every 100 examined. Many of these openings were supported only by suspicion; the total openings represented approximately one of every 4,000 envelopes arriving from abroad.

Of the approximately 270,000 pieces of mail opened each year, the Customs Service informs us, it found undeclared dutiable materials in approximately 27,000. Duty was assessed on these items before delivery. The Customs Service also found 18,000 envelopes containing prohibited items in fiscal 1975 and over 21,000 envelopes containing prohibited items in fiscal 1976.[22]

[21] Postal officials refer to the Customs Service mail appearing to contain something other than correspondence; they also refer all mail coming from certain countries, such as Thailand and Colombia, that are notorious sources of contraband. See also A. 39.

[22] See Appendix B, *infra*, p. 7A, which sets out a description of the prohibited items found and seized. This table counts only one item per envelope, but some contained more than one. With 62 officers examining 27,000,000 envelopes yearly, and assuming 230 working days each year, each office must scrutinize almost 1,900 envelopes daily, or 240 each hour. Each officer opens approximately 19 envelopes daily and finds approximately 3.3 containing prohibited or dutiable items.

The discoveries of prohibited items in envelopes dwarfed the discoveries in packages: only 748 prohibited items were found in packages in fiscal 1975, and only 915 in fiscal 1976.

These data suggest that envelopes are an attractive medium for smugglers. Despite the fact that the Customs Service found dutiable or prohibited matter in almost one-fifth of the envelopes it opened in the last two fiscal years, great quantities of such items continue to be sent by mail. A requirement that customs officers have probable cause before opening an envelope would cripple the inspection program and greatly facilitate smuggling. In this area, searches on suspicion amounting to less than probable cause are essential to "maintaining any kind of credible deterrent" (*Almeida-Sanchez* v. *United States, supra,* 413 U.S. at 293 (White, J., dissenting)).

The court of appeals suggested that it would take a flexible view of probable cause (Pet. App. 13a–14a n. 8). It is hard to know what to make of this statement. If the court meant that it would be enough to have probable cause to believe that something other than correspondence is in an envelope, the court's decision not only denigrates the concept of probable cause but also is unresponsive to any real problem of government misconduct: customs officers do not open envelopes unless they have reason to believe that they contain things in addition to correspondence. But if—as seems likely in light of its suggestion that cus-

toms officers make use of trained dogs, X-ray machines, metal detectors, and the like—the court meant to require something more, then its decision would preclude effective interception of contraband at the border. None of the techniques the court of appeals mentioned can distinguish a copy of a book by Jane Austin from a book of hard-core pornography; none can distinguish a toy watch from a real one, or a jewel from a piece of glass.

Perhaps a requirement of probable cause might be justified if it were necessary to protect important privacy interests. But the opening of an envelope at the border, when the officers have reason to believe that it contains things other than or in addition to correspondence, can fairly be characterized as a "minimal" intrusion. *United States* v. *Martinez-Fuerte, supra,* slip op. 15. It is certainly less of an intrusion than the detailed personal inspection to which international travelers are exposed routinely. It does not expose any person to indignity or delay. It does not invade any area in which the individual has a legitimate expectation of privacy; it is well known that things crossing the border are subject to inspection, and no one could reasonably expect that bulky and opaque envelopes will escape some form of scrutiny. The pressing needs of law enforcement, balanced against the interests of privacy, as in *Martinez-Fuerte,* lead inescapably to a conclusion that searches of envelopes at the border are reasonable.

The court of appeals advanced several reasons for a contrary conclusion, but none withstands analysis.

The court thought that searches of envelopes are less "exigent" than searches of people, because people are more mobile (Pet. App. 10a). This does not explain, however, why searches of trunks and baggage and parcels are permitted, and it does not account for the unique historical footing of border searches. The court thought that envelopes are less likely than packages to be used to carry contraband (Pet. App. 8a). That is simply wrong. Perhaps because senders are certain that parcels will be inspected but know that many envelopes will escape inspection, international letter class mail is preferred to packages as a place to conceal contraband (see App. B, *infra,* p. 7A). The court apparently thought that dogs, metal detectors, and other devices could detect contraband more readily when the contraband is in envelopes than when it is in packages (Pet. App. 8a); there is no support for this speculation, and at a minimum it is unproven.

The court of appeals was most concerned, however, with the "chilling effect" that openings of envelopes may have upon the expression of ideas. Although we do not doubt that the privacy interest in domestic communication by first class mail is sufficient to require probable cause and a warrant before an envelope can be opened,[23] that requirement ought not to be extended to envelopes entering the country in letter class mail. Several reasons, in addition to the historic differences

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[23] See *Ex parte Jackson*, 96 U.S. 727; *United States* v. *Van Leeuwen*, 397 U.S. 249. Cf. *Katz* v. *United States*, 389 U.S. 347 (domestic wire communications).

between border and inland searches, support this argument.[24]

First, any person who desires to guard against the reading of international correspondence has a simple expedient: he can send envelopes that are not so large or bulky that they give rise to suspicion that they contain something other than correspondence. There has been no showing in this case that customs inspectors open such envelopes. Second, 19 C.F.R. 145.3 provides that no correspondence may be read without a warrant. See also 18 U.S.C. 1702. There has been no claim in this case that correspondence has been read or censored by customs officers. Third, although many envelopes contain personal correspondence, many others do not. Conversely, many packages or parcels contain correspondence. The court of appeals would allow searches of parcels containing correspondence; it should follow that searches of envelopes that appear to contain merchandise should be permitted.

The court of appeals analyzed this case as if international correspondence were regularly read or censored by customs officers (Pet. App. 11a, 13a). The data provided by the Customs Service shows that fewer than one in 4,000 envelopes is opened, however, and there is no evidence in the record of this case demonstrating that the Customs Service violates its regulation forbidding the reading of letters. There is

[24] In fact, the international exchange of ideas does not stand on an equal footing with the domestic exchange of ideas. See *Kleindienst* v. *Mandel*, 408 U.S. 753, 762–770.

no practice of routinely opening without a warrant envelopes that appear to contain only correspondence.

In any event, respondents have not argued that *their* correspondence was read, nor could they, for the envelopes contained no correspondence. Whatever inhibitory effect customs inspections may have on others, respondents were not exposed to it.[25] The concerns articulated by the court of appeals would justify, at most, a rule that correspondence seized without warrant or probable cause from international mails, and "fruits" derived from a reading of such correspondence, may not be admitted into evidence. There is no need to fashion a broader exclusionary rule and to exclude contraband discovered in bulky

[25] Such an effect is not different in kind from that attending the inspection of envelopes entering a prison. "The possibility that contraband will be enclosed in letters" is sufficient to allow prison officials to open *all* envelopes. *Wolff* v. *McDonnell*, 418 U.S. 539, 577. The Court considered and rejected as cumbersome and unworkable a proposal by the court of appeals in that case (remarkably like the proposal of the court of appeals here) that prison officials use sophisticated detection techniques and verify the contents of suspicious envelopes by communicating with the sender. In *Wolff* the envelopes ultimately were opened in the prisoner's presence; customs inspectors do not open envelopes in the addressee's presence. We submit, however, that this should not call for a different result, at least in the absence of some demonstration that customs inspectors are abusing their authority. Obviously the practicality of having the addressee present is far greater in a prison than in the international mail context. Moreover, in cases such as the instant one, providing for the presence of the addressee when opening the envelope would drastically subvert the prospects for successful prosecution when a crime is involved to which the addressee is a party.

envelopes.[26] Exclusionary rules are in derogation of the search for truth in a criminal case; they should not sweep more broadly than is necessary to achieve the deterrence thought to be desirable. Cf. *United States* v. *Janis*, No. 74–958, decided July 6, 1976.

[26] Even if, despite existing legal prohibitions, there were occasional instances of the reading of correspondence by individual customs officers acting out of malicious curiosity, it seems unlikely that the court of appeals' procedures would be effective in eliminating such meddling; a Customs Service employee who reads international correspondence does so for personal reasons, not out of any expectation that incriminating material will be found and that a criminal prosecution will follow. Because reading of international correspondence is not motivated by a desire to secure a criminal conviction, suppression of evidence in a criminal case (in which, indeed, no correspondence has been read) could not deter the conduct. Suppression would penalize customs officials who engage in legitimate activities—the discovery and seizure of contraband—while leaving customs officials who improperly read correspondence unaffected. What is more, there is no reason to suppose that a requirement of a warrant would overcome any tendency that now exists on the part of Customs Service employees to read international correspondence; if these employees are (by assumption) willing to ignore present prohibitions (18 U.S.C. 1702 and 19 C.F.R. 145.3), they also would be willing to ignore a requirement of probable cause and a warrant. If, on the other hand, customs officials adhere to 19 C.F.R. 145.3, a requirement of probable cause and a warrant would not add appreciably to the protections accorded international correspondence.

Much the same argument applies to concerns about the possible reading of international correpondence by national security agencies of the federal government. To the extent these agencies may read international correspondence, they do not do so with any expectation of discovering evidence to be introduced in a criminal prosecution; an exclusionary rule therefore would not deter their conduct. Nor would they be affected by any requirement directed to the legitimate activities of the Customs Service.

D. A WARRANT IS NOT REQUIRED TO OPEN AN ENVELOPE AT THE BORDER

The court of appeals, having concluded that searches of envelopes entering this country from abroad must be based on particularized suspicion about the contents of an envelope amounting to some form of "probable cause," invalidated the search in this case because, it held, a search of the contents of such envelopes is lawful only if a search warrant has been obtained. We submit that—whatever may be said about the need of some kind of particularized suspicion to support the constitutional reasonableness of opening envelopes from abroad at the border—the Fourth Amendment does not require that search warrants be obtained in advance of such openings.

In the preceding discussion we have demonstrated that both history and compelling exigencies attending the enforcement of the customs laws dictate that customs authorities be permitted to open envelopes such as those involved in the instant case without any particularized suspicion that any given envelope contains dutiable items or contraband, and certainly without suspicion amounting to probable cause. If that is so, it follows directly that the privacy interests at stake are not the kind that should receive the protection of a warrant requirement; warrants, after all, may be issued only upon a showing of probable cause, under the express terms of the Fourth Amendment.[27]

[27] The court of appeals thought that there was probable cause to open the envelopes in this case (Pet. App. 13a n. 8). We hesitate to take issue with that conclusion, although the information known

What is more, because it has always been understood that enclosed containers entering this country from abroad may be opened without probable cause, neither the addressee nor the sender of a bulky envelope has a reasonable expectation of privacy in its interior. See *Katz* v. *United States*, 389 U.S. 347, 353. In the absence of such a reasonable expectation of privacy, the usual foundation for requiring a warrant is absent.The court of appeals thought otherwise, relying on *Camara* v. *Municipal Court*, 387 U.S. 523 (see Pet. App. 7a n. 5). *Camara*, however, is "not * * * an apt model. It involved the search of private residences, for which a warrant traditionally has been required." *United States* v. *Martinez-Fuerte*, *supra*, slip op. 21. The opening of envelopes and the search for dutiable goods and contraband involved in the customs practice does not present the sort of dangers against which a warrant is designed to protect. This case does not involve "a search or seizure carried out on a suspect's premises" (*Coolidge* v. *New Hampshire*, 403 U.S. 443, 474 (plurality opinion)); it involves, instead, a search of an enclosure in which

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to the officer (that the envelope was bulky and from a country notorious as a source of contraband) seemingly would not be sufficient to authorize an inland search. But however that may be, the court's conclusion that there was probable cause on these facts does not buttress its conclusion that a warrant was required. If officer Kallnischkies could have opened the envelopes on mere suspicion without a warrant, the fact that his suspicion in this case was strong enough to amount to probable cause (and thus to enable him to obtain a valid warrant) would not compel him to seek antecedent judicial approval that is unnecessary when suspicion is weaker.

there has traditionally been little or no expectation of privacy. Far from falling within the rule that searches are presumptively unreasonable without a warrant, the search here falls within the oldest exception to a warrant requirement.

We also believe that the court of appeals' warrant requirement is entirely impractical. Customs officials who must scrutinize an average of 1,900 envelopes daily, and who now open an average of 19 envelopes daily, could not find time to draw up 19 applications for warrants without dramatically decreasing their ability to inspect the mail. The enormous volume of international mail makes individual warrants impossible; neither the Customs Service nor the federal courts could cope with a requirement that approximately 270,000 warrants be issued each year, each with an affidavit "particularly describing the place to be searched, and the persons or things to be seized."

Perhaps the court of appeals envisaged streamlined procedures under which customs officials would present larger quantities of mail to a magistrate at one time for some kind of group warrant. But this, too, would hinder effective use of the time of the officials to search for smuggling, while at the same time depriving the warrant procedure of the means of affording any realistic antecedent judicial scrutiny. If the Customs Service simply presented a bag full of mail to a magistrate and represented that each piece required inspection, the magistrate could not effectively make a detached judgment whether the opening of

particular envelopes was appropriate; if, on the other hand, customs personnel attempted to provide the magistrate with a detailed description of each envelope, and the attributes of that envelope that made opening appropriate, the process would be nearly as cumbersome as obtaining a separate warrant for each envelope.

The Warrant Clause of the Fourth Amendment trol over massive and routine administrative searches simply was not designed as a method of judicial con- such as border searches. The Fourth Amendment's requirement of "reasonableness" does not depend, in these circumstances, upon antecedent judicial approval. The search here was reasonable because it took place at the border as part of a longstanding administrative program of searches. The activities of the customs officers are a matter of routine; to the extent there is any question about the reasonableness of particular border searches, these questions can be examined in subsequent judicial proceedings no less well than the activities of the Border Patrol that were upheld in *Martinez-Fuerte*.

Moreover, the opening of an envelope at the border is no more intrusive, and no more in need of antecedent judicial approval, than is the search of a package at the border, which the court recognized does not require a warrant. It is far less intrusive than the search of a person entering the United States. As Judge Robb remarked in dissent in this case (Pet. App. 19a), "that the contents to be inspected are enclosed in an envelope, rather than by wrapping

paper and twine, cannot be of critical significance." We submit that the decision of the court of appeals stands the Fourth Amendment on its head by requiring greater cause and more judicial scrutiny to make the less intrusive search. The court of appeals' approach—making border searches stand on exigent circumstances in particular cases—rides roughshod over 200 years of history and erects an unworkable requirement that does little or nothing to enhance the safeguards afforded to recipients of international mail.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX A

1. Section 3 of the Act of July 18, 1866, 14 Stat. 178, Rev. Stat. § 3061, 19 U.S.C. 482, provides in relevant part:

> Any of the officers or persons authorized to board or search vessels may stop, search, and examine * * * any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; * * *.

2. Section 582 of the Act of June 17, 1930, 46 Stat. 784, 19 U.S.C. 1582, provides in relevant part:

> The Secretary of the Treasury may prescribe regulations for the search of persons and baggage * * *; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations.

3. 19 C.F.R. Part 145 provides in relevant part:

* * * * *

§ 145.1 Definitions.

The following are general definitions for the purposes of part 145:

(a) *Mail.* "Mail" or "international mail" means both Postal Union mail and parcel post, as those terms are construed in 39 CFR Part 12.

(b) *Letter mail.* "Letter mail" means letters and letter packages in Postal Union mail.

(c) *Package.* "Package" means any parcel, packet, envelope, or other similar container, whether sealed or unsealed, arriving in the international mail.

§ 145.2 Mail subject to Customs examination.

All mail originating outside the Customs territory of the United States, whether sealed or unsealed, is subject to Customs examination, except:

(a) Mail known or believed to contain only official documents addressed to officials of the U.S. Government;

(b) Mail addressed to Ambassadors and Ministers (Chiefs of Diplomatic Missions) of foreign countries; and

(c) Letter mail known or believed to contain only correspondence or documents addressed to diplomatic missions or the officers thereof, or to international organizations designated by the President as public international organizations pursuant to the International Organizations Act (see § 148.87(b) of this chapter). Mail, other than letter mail, addressed to such designated international organizations is subject to Customs examination except where the organization certifies under its official seal that such mail contains no dutiable or prohibted articles. Any Customs examination made shall, upon request of the addressee international organization, take place in the presence of an appropriate representative of that organization.

§ 145.3 Reading of correspondence prohibited.

No Customs officer or employee shall read or authorize or allow any other person to read any

correspondence contained in sealed letter mail of foreign origin unless a search warrant has been obtained in advance from an appropriate judge or U.S. magistrate which authorizes such action.

§ 145.4 Dutiable merchandise without declaration or invoice, prohibited merchandise, and merchandise imported contrary to law.

(a) *Subject to seizure and forfeiture.* When, upon Customs examination, a package from abroad is found to contain merchandise subject to duty or tax, and the package is not accompanied by an appropriate Customs declaration and invoice or statement of value required by § 145.11, or is found to contain material prohibited importation or imported contrary to law, the merchandise is subject to seizure and forfeiture.

* * * * *

4. 39 C.F.R. Part 61 provides in relevant part:

§ 61.1 What is subject to examination.

All mail originating outside the customs territory of the United States is subject to customs examination, except (a) mail addressed to Ambassadors and Ministers (Chiefs of Diplomatic Missions) of foreign countries, (b) letter mail known or believed to contain only correspondence or documents addressed to diplomatic missions or the officers thereof, or international organizations designated by the President as public international organizations pursuant to the International Organizations Immunities Act, and other mail addressed to such international organizations pursuant to instructions issued by the Department of the Treasury, and (c) mail known or believed to contain only official documents addressed to officials of the U.S. Government.

§ 61.2 Separation points.

(a) *Exchange offices.* Mail believed to contain matter liable to customs duty or believed to contain prohibited matter is submitted immediately to local customs officers, except when exchange offices are authorized to redispatch such mail to designated distribution offices for customs treatment thereat. Exchange offices which redispatch matter to be submitted to customs officers will attach Tag 10 (previously Label 81), a reusable pink slotted tag, bearing the words, "This sack contains mail Supposed Liable to Customs Duty," to the label holders or hasps of sacks or pouches.

(b) *Distribution offices.* Distribution offices will submit such mail to customs officers as soon as possible after receipt. The reusable tags, Tag 10, removed from sacks containing this mail will be returned periodically to the postmasters at New York, New Orleans, San Francisco, Seattle, or Miami, as may be appropriate from a geographical standpoint.

(c) *Priority treatment of airmail.* Airmail articles receive preferential customs treatment and are submitted to customs separately from surface mail. Upon return from customs, dispatch will be by air if it will expedite delivery.

§ 61.3 Examination.

(a) *Registered mail.* The postmaster or other designated postal employee must be present when registered articles and registered parcels are opened by customs officers for examination. After customs treatment, the customs officer will repack and reseal the articles and parcels.

* * * * *

(c) *Failure to receive customs treatment.* Should an article known or supposed to be dutiable be observed at or en route to the office of address without having received customs treatment, forward it, labeled "For Customs Inspection," under cover to U.S. Customs Office at the nearest office listed in § 61.3(d), except that if registered matter is involved send to the Postmaster of the city where the customs office is located so the mail may be handled in accordance with § 61.3(a). Packages that have received customs treatment will bear an endorsement such as "Passed Free U.S, Customs" or the red adhesive U.S. Customs Service envelope that contains Customs Mail Entry, Form 3419. The U.S. Customs Service does not endorse "Passed Free of Duty" on printed matter (magazines, newspapers, circulars, and books). If printed matter is dutiable it will bear the red adhesive envelope that contains Customs Mail Entry, Form 3419.

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APPENDIX B

SEIZURES FOR CUSTOMS VIOLATIONS [1]

Violations	Letter mail		Parcel mail	
	1975	1976	1975	1976
Weapons	0	1	20	35
Cocaine	496	644	31	24
Drug Paraphernalia	0	0	5	3
Hashish	1, 902	3, 600	231	153
Heroin	72	148	2	18
LSD	0	3	0	1
Marijuana	1, 242	1, 526	222	274
Other Dangerous Drugs	39	90	15	85
Opium	3	9	6	6
Switch Blade Knives	0	1	66	114
Morphine	0	0	0	2
Pornography	[2] 14, 250	[2] 15, 300	[2] 150	[2] 200
Totals	18, 004	21, 322	748	915

[1] Source: Information supplied by the Customs Service. Each seizure reflects contraband found in a single envelope or package, which may contain more than one prohibited item.

[2] Estimate.

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